

Corporations Act 2001
A COMPANY LIMITED BY SHARES

**CONSTITUTION of
DEEPC STORE PTY LTD**

As adopted by Special Resolution of the members on the 27th day of December 2022

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INTERPRETATION

Clause 1

(1) In this Constitution unless the context otherwise requires:

“Act” means the Corporations Act 2001 (Cth);

“Company” means DEEPC STORE PTY LTD;

“Directors” means the persons appointed as Directors of the Company and where the context allows includes the person appointed as the sole Director of the Company;

“member” means all members for the time being of the Company and if there is only one member, that member;

“seal” means the common seal of the Company and includes any official seal of the Company;

“secretary” means any person appointed to perform the duties of a secretary of the Company;

“Sub-Clause” means (where not otherwise defined) a sub-clause within the same clause as the reference occurs;

The singular shall mean and include the plural and vice versa and any gender shall mean and include all other genders;

References to any statutory enactment shall mean and be construed as references to that enactment as amended modified and re-enacted from time to time;

The index and headings used herein are for ease of reference only and shall not affect the construction or interpretation of this Constitution;

Words importing persons shall include corporations.

(2) Section 46 of the Acts Interpretation Act 1901 applies in relation to this Constitution as if it were an instrument made by an authority under a power conferred by the Corporations Act 2001 as in force on the day on which this Constitution becomes binding on the Company.

(3) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

REPLACEABLE RULES

Clause 2

All Replaceable Rules contained in the Corporations Act 2001 shall not apply to the company.

PROPRIETARY COMPANY

Clause 3

The company is registered as a proprietary Company and accordingly –

(1) must be limited by shares;

- (2) the number of members of the Company (counting joint holders of shares as one person and not counting any member in the employment of the Company or of its subsidiaries or any member who was an employee of the Company or of its subsidiaries when they became a member of the Company) is limited to fifty;
- (3) must not engage in any activity that would require the lodgement of a prospectus under Chapter 6D of the Act or a corresponding law (excepting an offer of shares to existing members of the Company or employees of the Company or of a subsidiary of the Company).

ISSUE OF SHARE CAPITAL AND VARIATION OF RIGHTS

Clause 4

Subject to this Constitution, and to the provisions of the Corporations Act 2001 and to any special rights attached to any shares for the time being issued all shares shall be under the absolute control of the Directors who may classify, allot, grant options over or otherwise dispose of or otherwise deal with the unissued shares to such person on such terms and conditions and for such consideration and price and subject or not to the payment of any part of the amount thereof in cash and with full power to give to any person the call of any shares as the Directors may determine and any shares may be issued with such preferential, deferred, qualified or special rights, privileges or conditions, or restrictions including but not limited to restrictions in regard to dividends, voting, or return of capital as the Directors may from time to time determine.

Clause 5

The Company shall have power to issue shares ("redeemable"), whether preference or otherwise, carrying the right of redemption out of profits or otherwise in accordance with Section 254A of the Corporations Act or liable to be so redeemed at the option of the Company and the Directors may, subject to the provisions of Section 254J-L of the Corporations Act exercise such power of redemption in any manner they may think fit.

Clause 6

- (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.
- (2) The provisions of this Constitution relating to general meetings apply so far as they are capable of application and mutatis mutandis to every such separate meeting of classes of shareholders except that –
 - a. a quorum is constituted by 2 persons who, between them hold or represent by proxy one-third of the issued shares of that class; or
 - b. where the Company has issued shares of that class to only one member, that member shall constitute a quorum; and
 - c. any holder of shares of that class, present in person or by proxy, may demand a poll.
- (3) Subject to the provisions of Division 2 of Part 2J.1 of the Corporations Act, the Company may buy back its own shares.

PAYMENTS BY WAY OF BROKERAGE OR COMMISSION

Clause 7

- (1) The Company may exercise the power to make payments by way of brokerage or commission conferred by the Act in the manner provided by the Act.
- (2) Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

SHARES HELD IN TRUST

Clause 8

- (1) Shares held by a member as Trustee of a particular trust may be marked in the register of members of the Company in such a way as to identify them as being held in respect of that trust but no liability shall be created by any such marking and the Company shall not be affected with notice of any trust so recorded.
- (2) Notwithstanding the provisions of Sub-Clause 8 (1) the Company is not bound by or compelled in any way to recognise or to investigate (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or the holding of any share upon any Trust or any dealing by the Trustee of such share or (except as otherwise provided by this Constitution or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

CERTIFICATES

Clause 9

- (1) With the exception of the holder of a redeemable Subscriber Share which may be issued upon registration of the Company a person whose name is entered as a member in the register of members is entitled without payment to receive a certificate in respect of the share under the seal of the Company in accordance with the Act.
- (2) In respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.
- (3) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.
- (4) Upon the loss or destruction of a Share certificate, it may be renewed upon payment of a fee not exceeding the prescribed amount pursuant to the Act and on provision of:
 - a. a statement in writing that the certificate has been lost or destroyed, and has not been pledged, sold or otherwise disposed of and, if lost, that proper searches have been made; and
 - b. an undertaking in writing that if it is found or received by the owner it will be returned to the Company.

LIEN

Clause 10

- (1) The Company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- (2) The Company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by the person or the person's estate to the Company.
- (3) The Directors may at any time exempt a share wholly or in part from the provisions of this Clause.
- (4) The Company's lien (if any) on a share extends to all dividends payable in respect of that share.

Clause 11

- (1) Subject to Sub-Clause 11 (2), the Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien.
- (2) A share on which the Company has a lien shall not be sold unless –
 - a. a sum in respect of which the lien exists is presently payable; and
 - b. the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share, or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.

Clause 12

- (1) For the purpose of giving effect to the sale of a share pursuant to Clause 11, the Directors may authorise a person to transfer the shares sold to the purchaser of the shares.
- (2) The Company shall register the purchaser as the holder of the shares comprised in any such transfer and he is not bound to see to the application of the purchase money.
- (3) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

Clause 13

The proceeds of the sale of a share pursuant to Clause 11 shall be applied by the Company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES

Clause 14

- (1) The Directors may make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the issue price of the shares or by way of the amount paid up on the shares) and not by the terms of issue of those shares made payable at fixed times.

- (2) Each member shall, upon receiving at least 14 days notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on the person's shares.
- (3) The Directors may revoke or postpone a call.

Clause 15

A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.

Clause 16

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

Clause 17

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate as the Directors may determine but, not exceeding the rate charged by the Company's bankers on overdrafts of \$100,000, and the Directors may waive payment of that interest wholly or in part.

Clause 18

Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the issue price of the share or by way of the amount paid up on the shares, shall for the purpose of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise, apply as if the sum had become payable by virtue of a call duly made and notified.

Clause 19

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

Clause 20

- (1) The Directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- (2) The Directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed upon between the Directors and the member paying the sum.
- (3) For the purpose of Sub-Clause 20 (2), the prescribed rate of interest is –
 - a. if the Company has, by resolution, fixed a rate - the rate so fixed; and
 - b. in any other case, the rate charged by the Company's bankers on overdrafts of \$100,000

FORFEITURE OF SHARES

Clause 21

- (1) If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.
- (2) The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

Clause 22

- (1) If the requirements of a notice served under Clause 21 are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.
- (2) Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

Clause 23

A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Directors think fit.

Clause 24

A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him to the Company in respect of the shares (including interest, at the rate charged by the Company's bankers on overdrafts of \$100,000, charged, from the date of forfeiture, on the money for the time being unpaid, if the Directors think fit to enforce payment of the interest), but his liability ceases if and when the Company receives payment in full of all the money (including interest) so payable in respect of the shares.

Clause 25

A statement in writing declaring that the person making the statement is a Director or a secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in that statement, is prima facie evidence of the facts stated in that statement as against all persons claiming to be entitled to the share.

Clause 26

- (1) The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (2) Upon the execution of the transfer, the transferee shall be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (3) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

Clause 27

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the issue price of the share or by way of the amount paid up on the shares, as if that sum had been payable by virtue of a call duly made and notified.

TRANSFER OF SHARES

Clause 28

Subject to the provisions of this Constitution and except as provided in Sub-Clause (8) of this Clause no shares in the Company shall be transferred unless and until the rights of pre-emption conferred by Sub-Clauses (1) to (7) inclusive of this Clause have been exhausted provided always that these pre-emption provisions shall not apply where the Company buys back its own shares pursuant to the provisions of Division 2 of Part 2J.1 of the Corporations Act.

- (1) Any member proposing to transfer any share or shares (hereinafter referred to as "the Transferor") shall give notice in writing to the Company of that member's intention to do so (hereinafter called a "transfer notice") specifying the share or shares that member proposes to transfer and if that member so desires the price per share which that member is willing to accept. Such notice shall constitute the Company the Transferor's agent for a period of twenty-eight days from the date of the Company's receipt thereof for the sale (subject to the other provisions of this Clause) of such share or shares to any person eligible to be a member (whether or not a member) at the price per share specified in the transfer notice or determined in terms of Sub-Clause 28 (2) below. A transfer notice shall if it relates to more than one share operate as a separate notice in respect of each of such shares. A transfer notice shall not be revocable except as provided in Sub-Clause 28 (2) below.
- (2) If no price is specified or if in the opinion of the Directors the price per share specified by the Transferor is not its fair value the Directors shall request the Auditor or if there be no Auditor a person selected by the Directors or failing such selection by the President for the time being of the Australian Society of Certified Practising Accountants or any succeeding Association (the Auditor or person so selected being referred to in this Article as "the Valuer") to determine the fair value per share of such shares. The costs of such valuation shall be borne by the Transferor and the Company equally. Thereafter the Directors shall notify the Transferor of the fair value so determined and the Transferor shall be entitled to withdraw his or her transfer notice within seven (7) days after receiving such notification (but not thereafter save with the written consent of the Directors). In so determining such fair value the Valuer shall be considered to be acting as an expert and not as an arbitrator and accordingly the provisions of the Commercial Arbitration Act 1985 shall not apply.
- (3) The share or shares the subject of a transfer notice shall be offered by the Directors to all other holders of shares in the Company of the same class as those described in the transfer notice as nearly as may be in proportion to the existing shares held by them respectively at the price specified by the Transferor or determined by the Valuer (whichever be the lower); and the offer shall limit the time within which the same may be accepted and specify that any member entitled who desires to {819608/NJB/NJB0526:1} 6 acquire shares in excess of that member's proportion should in that member's reply state how many excess shares that member desires to acquire. If all the members entitled do not claim their proportions the unclaimed shares shall be used in or towards satisfying the requests for excess shares. Any shares which shall not be capable (without introducing fractions) of being offered to the members entitled in proportion to their existing

holdings shall be offered to the members entitled or some of them in such proportions or in such manner as may be determined by lots to be drawn under the direction of the Directors.

(4) If the Directors –

- a. shall within a space of twenty-eight days after receiving a transfer notice find a purchaser in terms of Sub-Clause 28 (3) hereof willing to purchase all or any of the shares the subject of the transfer notice; and
- b. shall give notice thereof to the Transferor;

the Transferor shall be bound upon payment of such price to transfer the share or shares concerned to such purchaser.

(5) If the Transferor after having become bound as aforesaid makes default in transferring any such share or shares the Company may receive the purchase money and the Transferor shall be deemed to have appointed any one Director or the Secretary of the Company as the person's agent to execute a transfer of such share or shares to the purchaser and upon the execution of such transfer the Company shall hold the purchase money in trust for the Transferor. The receipt of the Company for the purchase money shall be a good discharge to the purchaser and after the person's name has been entered in the Register of Members in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any person.

(6) If within the period stipulated in Sub-Clause 28 (4) the Directors shall not find a member or purchaser in terms of Sub-Clause 28 (3) for all or any of the shares concerned, the Transferor may at any time within six (6) months thereafter sell those shares or any of them to any person at any price but not being less than the price as specified by the Transferor or determined by the Valuer (whichever be the lower) but subject nevertheless to the rights of the directors to decline to register any transfers as provided in Clause 31.

(7) The company in general meeting may by special resolution make and, from time to time, vary rules as to the mode in which any shares specified in any transfer notice shall be offered to the members and as to their rights in regard to the purchase thereof and in particular may give any member or class of members a preferential right to purchase the same.

(8) The foregoing provisions of this Clause shall not apply to any transfer of share or shares –

- a. merely for the purpose of effectuating the appointment of a new Trustee;
- b. to a husband, wife, brother, sister, parent, child or grandchild of a member;
- c. by a Trustee to a beneficiary under a will; (d) to a husband, wife or next of kin of a deceased member;
- d. where all the members of the Company (excluding the proposing Transferor) sign an instrument waiving all rights of entitlement they have under this Clause;
- e. where the share or shares are held jointly by several persons, by one of those persons to one or more of the other joint holders.

PROVIDED THAT it is proved to the satisfaction of the Directors that the transfer bona fide falls within one of these exceptions.

Clause 29

- (1) Subject to Clause 28, a member may transfer all or any of that member's shares by instrument in writing in any usual or common form or in any other form that the Directors approve.
- (2) An instrument of transfer referred to in Sub-Clause 29 (1) shall be executed by or on behalf of both the Transferor and the Transferee.
- (3) A Transferor of a share or shares remains the holder of the share or shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of such share or shares.

Clause 30

The instrument of transfer must be left for registration at the registered office of the Company, accompanied by the certificate of the shares to which it relates and such other information as the Directors properly require to show the right of the Transferor to make the transfer, and thereupon the Company shall, subject to the powers vested in the Directors by the provisions of this Constitution, register the transferee as a member.

Clause 31

The Directors may decline to register any transfer of shares, without giving any reason therefor

Clause 32

The registration of transfers may be suspended at such times and for such periods as the Directors from time to time determine not exceeding in the whole 30 days in any year.

TRANSMISSION OF SHARES

Clause 33

In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where the member was a sole holder, shall be the only persons recognised by the Company as having any title to that member's interest in the shares, but this Clause does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by that member with other persons.

Clause 34

- (1) Subject to the provisions of this Constitution and to the Bankruptcy Act 1966 as amended, a person becoming entitled to a share in consequence of the death or bankruptcy or the mental incapacity of a member may, upon such information being produced as is properly required by the Directors, elect either to be registered themselves as holder of the share or to have some other person nominated by that person registered as the transferee of the share.
- (2) If the person becoming entitled elects to be registered themselves, the person shall deliver or send to the Company a notice in writing signed by that person stating that that person so elects.
- (3) If the person elects to have another person registered, the person shall execute a transfer of the share to that other person.
- (4) All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of transfer of, a share are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

Clause 35

- (1) Where the registered holder of a share dies or becomes bankrupt, that person's personal representative or the trustee of that person's estate, as the case may be, is, upon the production of such information as is properly required by the Directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting or otherwise), as the registered holder would have been entitled to if he or she had not died or become bankrupt.
- (2) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purpose of this Constitution, be deemed to be joint holders of the share.

SHARE BUY BACK AND CAPITAL REDUCTION

Clause 36

Subject to Division 2 of Part 2J.1 of the Corporations Act, the Company may buy back its own shares and may, by special resolution, reduce its share capital, any capital redemption reserve fund, or any paid up share capital.

OFFERS OF SHARES

Clause 37

- (1) Subject to this Constitution and to any direction to the contrary that may be given by the Company in general meeting, all unissued shares in any class shall, before issue, be offered to such persons as at the date of the offer who hold shares in that class in proportion, as nearly as the circumstances allow, to the number of shares already held by them in that class.
- (2) The offer shall be made by notice in writing specifying the number of shares offered and limiting a time within which the offer, if not accepted will be deemed to be declined.
- (3) After the expiration of that time or on being notified by the person to whom the offer is made that the person declines to accept the shares offered, the Directors may issue those shares in such manner as they think most beneficial to the Company.
- (4) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with Sub-Clause 37 (1), the Directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the Company.

GENERAL MEETINGS

Clause 38

Any Director may whenever he thinks fit convene a general meeting of members.

Clause 39

Members with at least 5% of the votes that may be cast at a general meeting may call and arrange to hold a general meeting in accordance with Section 249F of the Corporations Act.

Clause 40

- (1) Except as provided by Sub-Clause 40 (2), a notice of general meeting shall:
 - a. subject to Section 249H of the Corporations Act, be given at least 21 days prior to the date of the general meeting unless otherwise agreed in accordance with Section 249H (2) of the Corporations Act;
 - b. set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - c. state the general nature of the meeting's business;
 - d. if a special resolution is to be proposed at the meeting – set out an intention to propose the special resolution and state the resolution; and
 - e. if a member is entitled to appoint a proxy – contain a statement setting out the following information:
 - i. that the member has a right to appoint a proxy;
 - ii. whether or not the proxy needs to be a member of the Company;
 - iii. that a member who is entitled to cast two or more votes may appoint two proxies and specify the proportion or number of votes each proxy is appointed to exercise.
- (2) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of accounts and the reports of the Directors and auditors, or the appointment and fixing of the remuneration of the auditors.
- (3) If all the members of the Company have signed a document containing a statement that they are in favour of a prescribed resolution in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a general meeting of the Company held on the day on which the document was signed and at the time at which the document was last signed by a member or, if the members signed the document on different days, on the day on which, and at the time at which, the document was last signed by a member, and where a document is so signed:
 - a. the Company shall be deemed to have held a general meeting at that time on the day; and
 - b. the document shall be deemed to constitute a minute of that meeting.
- (4) Sub-Clause 40 (3) shall not apply in relation to a document unless the document has been signed by each person who was a member of the Company at the time when the document was last signed.
- (5) For the purposes of Sub-Clause 40 (3):
 - a. two or more separate documents containing statements in identical terms each of which is signed by one or more members shall together be deemed to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents; and
 - b. a prescribed resolution is a resolution that is required by or permitted by the Corporations Act or the Constitution to be passed at a general meeting of the Company

and includes a resolution appointing a Director or auditor or approving of or agreeing to any act, matter or thing but does not include a resolution of which special notice is required or that is required to be passed by a majority other than a simple majority.

- (6) Where the Company has only one member and the member records the member's decision to a particular effect, the recording of the decision counts as the passing by the member of a resolution to that effect in accordance with Section 249B of the Corporations Act and a record made has effect as minutes of the passing of the resolution.

PROCEEDINGS AT GENERAL MEETINGS

Clause 41

- (1) The Company may hold a meeting at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.
- (2) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (3) A reference to a member being personally present at a meeting includes a reference to a member participating in a meeting by electronic means.
- (4) If there is a failure of the electronic means which results in the disconnection of any or all of the members participating in the meeting, the meeting shall be adjourned until the failure of the electronic means has been rectified. If that is not possible within 60 minutes of the initial failure, the chairman must adjourn the meeting until such time, date and place that is considered to give the members as a whole a reasonable opportunity to participate in the meeting.
- (5) For the purpose of determining whether a quorum is present:
 - a. a person attending as a proxy, or as representing a corporation that is a member, shall be deemed to be a member;
 - b. if a member has appointed more than one proxy or representative count only one of them;
 - c. if an individual is attending both as a member and as a proxy or body corporate representative count them only once.
- (6) A quorum shall be two members entitled to vote or one member where the Company has only one member entitled to vote.

Clause 42

If a quorum is not present within 30 minutes from the time appointed for the meeting –

- (1) where the meeting was convened upon the requisition of members - the meeting shall be dissolved; or
- (2) in any other case –
 - a. the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and

- b. if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting-
 - i. 2 members (or one member where the Company has only one member entitled to vote) constitute a quorum; or
 - ii. where 2 members (or one member where the Company has only one member entitled to vote) are not present the meeting shall be dissolved.

Clause 43

- (1) If the Directors have elected one of their member as chairperson of their meetings, the person shall preside as chairperson at every general meeting.
- (2) Where a general meeting is held and –
 - a. a chairperson has not been elected as provided by Sub-Clause (1); or
 - b. the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairperson of the meeting.

Clause 44

- (1) The chairperson may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (3) Except as provided by Sub-Clause (2), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Clause 45

- (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before a vote is taken, before or immediately after or on the declaration of the result of the show of hands) demanded –
 - a. by at least two members (or 1 member where the Company has only 1 member entitled to vote) present in person or by proxy;
 - b. by a member or members present in person or by proxy and representing not less than 5% of the total voting rights that may be cast on the resolution on a poll;
 - c. by the chairperson.
- (2) The percentage of votes that the members have is to be worked out as at midnight on the night before the poll is demanded.
- (3) Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- (4) The demand for a poll may be withdrawn.
- (5) A challenge to a right to a vote at a general meeting:
 - a. may only be made at the meeting; and
 - b. must be determined by the chairperson whose decision is final.

Clause 46

- (1) If a poll is duly demanded, it shall be taken in such manner and (subject to Sub-Clause (2)) either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- (2) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

Clause 47

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting of members at which the show of hands takes place or at which the poll is demanded, shall not have a casting vote.

Clause 48

Subject to any rights or restrictions for the time being attached to any class or classes of shares –

- (1) at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or attorney; and
- (2) on a show of hands every person present who is a member or a representative of a member has one vote, and on a poll every person present in person or by proxy or attorney has one vote for each share he holds.

Clause 49

In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy or by attorney, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

Clause 50

If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

Clause 51

A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by him in respect of shares in the Company have been paid.

Clause 52

- (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

- (2) Any such objection shall be referred to the chairperson of the meeting, whose decision is final.
- (3) A vote not disallowed pursuant to such an objection is valid for all purposes.

Clause 53

- (1) A member of the Company who is entitled to attend and cast a vote at a general meeting may appoint a person as the members proxy to attend and vote for the member at the meeting.
- (2) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (3) Each member may appoint a proxy. If a member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (4) Disregard any fractions resulting from the application of Sub-Clauses 53 (2) and (3).
- (5) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised by such corporation.
- (6) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (7) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A proxy is entitled to vote on a show of hands.
- (8) An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow –

[Name of Company]

I/We, _____, of _____, being a member/members of the abovenamed Company, hereby appoint _____ of _____ or, in his absence, _____ of _____ as my/our proxy to vote for me/us on my/our behalf at the *annual general *general meeting of the Company to be held on the _____ day of 20____ and at any adjournment of that meeting.

This form is to be used *in favour of *against the resolution.

Signed this _____ day of 20_____.

* Strike out whichever is not desired

To be inserted if desired

- (9) A proxy's authority to attend speak and vote at a general meeting shall not be affected by the presence of the member appointing the proxy.

Clause 54

An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of

the poll, at the registered office of the Company, a fax number at the Company's Registered office or at such other place fax number or electronic address as is specified for that purpose in the notice convening the meeting.

Clause 55

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

APPOINTMENT, REMUNERATION AND REMOVAL OF DIRECTORS

Clause 56

- (1) The first Director or Directors of the Company shall be the person or persons named with their consent in the application for registration of the Company;
- (2) Unless otherwise determined by the Company by resolution in general meeting the number of directors shall be not less than one nor more than twenty.
- (3) If the number of Directors shall number two or more at any time then until otherwise determined by the Company by resolution in general meeting the number of Directors shall not be less than two.

Clause 57

- (1) The Directors and also every Director appointed under this Constitution shall hold office until they shall be removed by a resolution of the Company passed in general meeting or until their office shall ipso facto become vacant pursuant to this Constitution or pursuant to the Corporations Act 2001.
- (2) A Director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.

Clause 58

The Directors may at any time, subject to the Corporations Act 2001, appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not at any time exceed the number determined in accordance with this Constitution.

Clause 59

A Director shall not be required to hold any share or shares in the capital of the Company.

Clause 60

- (1) The Directors shall be paid such remuneration as is from time to time determined by the Company in general meeting.
- (2) The remuneration of the Directors shall be deemed to accrue from day to day.

- (3) The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.
- (4) The remuneration of the Directors may include but shall not be limited to the payment, or contribution to payment, of premiums to any contributory or non-contributory pension, provident or superannuation fund established by the Company or the Directors as the case may be.

Clause 61

The Company may by ordinary resolution:

- (1) remove any Director before the expiration of his period of office, and may appoint another person in his stead.
- (2) appoint a person as a director.

Clause 62

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act 2001, the office of a Director becomes vacant if the Director –

- (1) becomes bankrupt;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (3) resigns his office by notice in writing to the Company;
- (4) is absent without the consent of the Directors from meetings of the Directors held during a period of 6 months;
- (5) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his interest as required by the Corporations Act 2001 (subject to the exception in Section 191(5) of the Act where the Director is the sole Director and the sole member of the Company).

Clause 63

If a person is the only director and the only member of the Company and that person:

- (1) dies or cannot manage the Company because of the person's mental incapacity and a personal representative or trustee is appointed to administer the person's estate or property the personal representative or trustee may appoint a person as the director of the Company;
- (2) becomes an insolvent under administration then the trustee in bankruptcy appointed to that person's estate may appoint a person as the director of the Company

CONFLICT OF INTEREST

Clause 64

- (1) A Director who has a material personal interest in a matter that relates to the affairs of the Company must, unless that Director is the sole Director, give the other Directors notice of the

interest held at a meeting of Directors as soon as practicable after the Director becomes aware of their interest in the matter.

- (2) The Director shall declare the full details of the nature and extent of the interest and its relation to the affairs of the Company.
- (3) The declaration of a Director's interest shall be recorded in the minutes of the meeting.
- (4) The Director may give the other Directors standing notice of the nature and extent of the interest in the matter either at a Directors' meeting or to the other Directors individually and in writing.
- (5) If standing notice is given to the other Directors individually in writing, it must be tabled at the next meeting of Directors after it is given.
- (6) Notwithstanding any rule of Corporations Act 2001 or equity to the contrary but subject to Clause 62(5), no Director shall be or become disqualified from his or her office by contracting with the Company either as vendor or purchaser, or promoter or otherwise or from being employed or performing any service for or on behalf of the Company in any capacity, professional or otherwise, nor shall any such contract or arrangement be liable to be impeached, affected or avoided by reason of that Director being a party to or otherwise interested in that contract or arrangement, nor shall that Director be liable to account to the Company for any profit realised by or in respect of such contract or arrangement.

Clause 65

If the Company has only a single director and single member then:

- (1) The Director may appoint another Director by recording the appointment and signing the record.
- (2) The Director may exercise all the powers of the Company except any powers that the Corporations Act 2001 or this Constitution requires the Company exercise in general meeting. The business of the Company is to be managed by or under the direction of the Director.
- (3) The Director may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The Director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.
- (4) The Director is to be paid any remuneration for being a director that the Company determines by resolution. The Company may also pay the Director's travelling and other expenses properly incurred by the Director in connection with the Company's business.

POWERS AND DUTIES OF DIRECTORS

Clause 66

- (1) Subject to the Corporations Act 2001 and to any other provision of this Constitution, the business of the Company shall be managed by or under the direction the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Corporations Act 2001 or by the provisions of this Constitution, required to be exercised by the Company in general meeting.
- (2) Without limiting the generality of Sub-Clause (1), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

Clause 67

- (1) The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (2) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him

Clause 68

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two directors (except where the number of directors is one then by one director only) or in such other manner as the Directors determine.

PROCEEDINGS OF DIRECTORS

Clause 69

- (1) 1) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (2) A Director may at any time, and a Secretary shall on the requisition of a Director, convene a meeting of the Directors by giving reasonable notice individually to every other Director.
- (3) The Directors may meet together either in person or by telephone, telex, radio, conference television or any other form of technology, audio or audio-visual instantaneous communication for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit. A resolution passed by such a conference shall, notwithstanding that the Directors are not present together at one place at the time of the conference, be deemed to have been passed at a meeting of the Directors held on the day and at the time at which the conference was held. The provisions of this Constitution relating to proceedings of directors shall apply, in so far as they are capable of application, to such conferences.
- (4) If there is a failure of any form of technology, audio or audio-visual instantaneous communication used in conducting a meeting of directors, the meeting shall be adjourned until the failure can be rectified. If that is not possible within one hour of the initial failure, the Directors who are able to communicate with each other must adjourn the meeting to a time, date and place determined by those Directors.

Clause 70

- (1) Subject to the provisions of this Constitution questions arising at a meeting of Directors shall be decided by a majority of votes of Directors entitled to vote on the resolution and any such decision shall for all purposes be deemed a decision of the Directors.
- (2) In the case of an equality of votes, the chairperson of the meeting shall not have a casting vote.

Clause 71

- (1) Notwithstanding any rule of law to the contrary or the holding by a Director of any office in the Company or in any other company or any other interest, subject to Clause 64 a Director may –

- a. hold any office or place of profit in the Company or in any company in which the Company may be a shareholder or otherwise interested;
 - b. in any capacity enter into a contract arrangement or understanding with the Company;
 - c. help to constitute a quorum and vote at any meeting of Directors convened to deal with any contract arrangement or understanding; or
 - d. (as per below)
 - i. where there is no common seal, sign any instrument in respect of any contract, arrangement or understanding and, where the Company has only one Director then, subject to Section 127 (1)(c) of the Corporations Act, where the Director is also the Secretary of the Company that person may sign and state next to their signature their capacity as sole Director and Secretary; or
 - ii. where there is a common seal, affix the seal to and sign any instrument in respect of any contract, arrangement or understanding and, where the Company has only one Director then, subject to Section 127 (2)(c) of the Corporations Act, where the Director is also the Secretary of the Company that person may witness the use of the seal of the Company and state next to the enfacéd seal their capacity as sole Director and Secretary
- (2) No contract, arrangement or understanding shall be avoided or rendered voidable by reason that that Director is or may be interested in that contract arrangement or understanding within the meaning of Section 191 of the Corporations Act 2001 or otherwise.
- (3) No Director shall be liable to account to the Company for any profit realised by him from any contract arrangement or understanding.
- (4) A Director entering into a contract arrangement or understanding shall disclose his interest in that contract arrangement or understanding in the manner mentioned in Section 191 of the Corporations Act 2001 (subject to the exception in Sub-Section (5) thereof where the Director is the sole Director and the sole member of the Company) PROVIDED THAT failure to make or record that disclosure shall not operate to avoid or render voidable that contract arrangement or understanding.

Clause 72

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is such number as is determined by the Directors and, unless so determined, is two and the quorum must be present at all times during the meeting except where the number of Directors is one then the quorum shall be one.

Clause 73

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of appointing a person as a Director in order to increase the number of Directors to a number sufficient to constitute such a quorum for a Directors' meeting or of convening a general meeting of the Company.

Clause 74

- (1) The Directors shall elect one of their number as chairperson of their meetings and may determine the period for which he is to hold office. If the Company has only one Director he shall act as chairperson.
- (2) Where such a meeting is held and –
 - a. a chairperson has not been elected as provided by Sub-Clause (1); or
 - b. the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;the Directors present shall elect one of their number to be chairperson of the meeting.

Clause 75

- (1) The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- (2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.
- (3) The members of such a committee may elect one of their number as chairperson of their meetings.
- (4) Where such a meeting is held and –
 - a. a chairperson has not been elected as provided by Sub-Clause (3); or
 - b. the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act;the members present may elect one of their number to be chairperson of the meeting.
- (5) A committee may meet and adjourn as it thinks proper.
- (6) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- (7) In the case of an equality of votes, the chairperson of the committee shall not have a casting vote.

Clause 76

- (1) If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in the terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
- (2) For the purposes of Sub-Clause 76 (1), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- (3) A reference in Sub-Clause 76 (1) to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

- (4) Subject to Section 249B of the Corporations Act, where the Company has only one director and the Director records in writing a decision or declaration to a particular effect, and signs such record then the decision counts as the passing by the Director of a resolution to that effect and the declaration counts as the making of a declaration to that effect made at a meeting of directors.

Clause 77

All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of the committee, or to act as a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

ALTERNATE DIRECTORS

Clause 78

- (1) A Director may appoint a person (whether a member of the Company or not) to be an alternate Director in the person's place during such period as he thinks fit.
- (2) An alternate Director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in the person's stead.
- (3) An alternate Director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate Director shall be deemed to be the exercise of the power by the appointor.
- (4) An alternate Director is not required to have any share qualification.
- (5) The appointment of an alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate Director has not expired, and terminates in any event if the appointor vacates office as a Director.
- (6) An appointment or the termination of an appointment of an alternate Director shall be effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.

MANAGING DIRECTOR

Clause 79

- (1) The Directors may from time to time appoint one or more of their number to the office of Managing Director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke or vary any such appointment.
- (2) A Director so appointed shall have the appointment automatically terminated if the person ceases from any cause to be a Director.

Clause 80

A Managing Director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors determine.

Clause 81

- (1) The Directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a Managing Director any of the powers exercisable by them.
- (2) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.
- (3) The Directors may at any time revoke or vary any of the powers so conferred on a Managing Director.
- (4) The Directors may delegate the responsibility for the day to day management of the operations of the Company to the Managing Director.
- (5) The Managing Director will carry out the directions of the Directors and report to the Directors

ASSOCIATE DIRECTORS

Clause 82

- (1) The Directors may from time to time appoint any person to be an Associate Director and may from time to time terminate any such appointment.
- (2) The Directors may from time to time determine the powers, duties and remuneration of any person so appointed.
- (3) A person so appointed is not required to hold any shares to qualify that person for appointment but, except by the invitation and with the consent of the Directors, does not have any right to attend or vote at any meeting of Directors.

SECRETARY

Clause 83

- (1) Subject to the Corporations Act 2001 the Company is not required to appoint a Secretary.
- (2) If the Company has a Secretary that person shall hold office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

COMMON SEAL

Clause 84

- (1) The Company need not have a common seal.
- (2) If the Company has a seal the Directors shall provide for the safe custody of that seal which shall not be affixed to any instrument except by the authority of a resolution of the Directors or a committee of the Directors duly authorised by the Directors.
- (3) If the Company has a seal, ways in which the Company can execute instruments are:
 - a. where the Company has more than one Director and a Secretary, the instrument must be signed by a Director and countersigned by either another Director, the Secretary (but this cannot be a person who is also a signatory in their capacity as a Director) or another person appointed by the Company for that purpose;

- b. where the Company has more than one Director but no Secretary, the instrument must be signed by a Director and countersigned by another Director or another person appointed by the Company for that purpose;
 - c. where the Company is a sole Director company and that Director is also sole Secretary, the instrument may be signed by that Director provided that it is stated next to the signature that the person is the sole Director and sole Secretary of the Company;
 - d. where the Company is a sole Director Company but does not have a Secretary, the instrument may be signed by that Director provided that it is stated next to the signature that the person is the sole Director of the Company;
 - e. where the Company is a sole Director Company but has a Secretary that is not that Director, the instrument must be signed by that Director and countersigned by the Secretary or another person appointed for that purpose.
- (4) The Company may execute instruments without using a seal by signing the instrument as detailed in clauses 84 (3) (a) (b) (c) (d) and (e)
- (5) A Director may affix the seal to or sign any instrument as set out in this clause notwithstanding that they may be in any way interested in the transaction.

ACCOUNTS AND INSPECTION OF RECORDS

Clause 85

Subject to the Corporations Act 2001 the Directors shall:

- (1) Cause proper accounting and other records to be kept and also distribute copies of balance sheets as required by the Corporations Act 2001.
- (2) If required by the Directors, by the ASIC or by the Corporations Act 2001 or if directed by members holding five per cent or more of the voting Shares in the Company, cause to be prepared a financial report and Directors' report for a financial year providing the direction given by members is made no later than 12 months after the end of the financial year concerned and the direction is signed by the members giving the direction.
- (3) Determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of members other than Directors, and a member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

DIVIDENDS AND RESERVES

Clause 86

The Company in general meeting may (provided that section 254T of the Corporations Act and any relevant amendment or replacement of that section are complied with) declare a dividend if, and only if the Directors have recommended a dividend be paid. A dividend shall not exceed the amount recommended by the Directors. The Directors may fix the amount, the time for payment and the method of payment.

Clause 87

The Directors may (provided that section 254T of the Corporations Act and any relevant amendment or replacement of that section are complied with) authorise the payment by the Company to the members of such interim dividends as appear to the Directors to be justified by the financial position of the Company.

Clause 88

Interest is not payable by the Company in respect of any dividend.

Clause 89

- (1) The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.
- (2) Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.
- (3) The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

Clause 90

- (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
- (2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.
- (3) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this Clause to be paid or credited as paid on the share.

Clause 91

The Directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to shares in the Company.

Clause 92

- (1) Any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the Directors shall give effect to such a resolution.
- (2) Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.

Clause 93

- (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to –
 - a. the address of the holder as shown in the Register of Members, or in the case of joint holders, to the address shown in the Register of Members as the address of the joint holder first named in that register; or
 - b. to such other address as the holder or joint holders in writing directs or direct.
- (2) Any one of two or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

CAPITALISATION OF PROFITS

Clause 94

- (1) Subject to Sub-Clause 94 (2), the Company in general meeting may resolve that it is desirable to capitalise profits, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, and that that sum be applied, in any of the ways mentioned in Sub-Clause 94 (3) for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.
- (2) The Company shall not pass a resolution as mentioned in Sub-Clause 94 (1) unless the resolution has been recommended by the Directors.
- (3) The ways in which a sum may be applied for the benefit of members under Sub-Clause 94 (1) are –
 - a. in paying up any amounts unpaid on shares held by members;
 - b. in paying up in full unissued shares or debentures to be issued to members as fully-paid; or
 - c. partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).
- (4) The Directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves may –
 - a. issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
 - b. authorise any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures for the payment up by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised;

and any agreement made under an authority referred to in paragraph (b) is effective and binding on all the members concerned.

NOTICES

Clause 95

- (1) Subject to the Corporations Act 2001 and any requirement of the Act pertaining to the passing of a special resolution, at least 21 days written notice must be given of any general meeting. However, the Company may call a general meeting on shorter notice if members with at least 95% of the vote that may be cast at the meeting agree beforehand, except at a general meeting at which a resolution will be moved to remove the Company's auditor (if any) pursuant to Section 329 of the Corporations Act 2001.
- (2) Subject to the Corporations Act 2001, any general meeting or any proceeding at the meeting is not invalid only because of:
 - a. the accidental omission to give notice of the meeting;
 - b. the non-receipt of such notice by any person entitled to such notice; or (c) a defect in such a notice given.
- (3) A notice may be given by the Company to any member either by –
 - a. serving it on the person personally;
 - b. sending it by post to the person at their address as shown in the Register of Members or the address (if any) supplied by the person to the Company for the giving of notices to the person;
 - c. by sending it to the fax number or electronic address (if any) nominated by the member; or
 - d. by any other means that the Constitution permits.
- (4) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, 3 days after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (5) Where a notice of meeting or other notice is sent by fax or other electronic means, notice shall be taken to be given on the business day after it is sent.
- (6) A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the Register of Members in respect of that share.
- (7) A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on the person personally or by sending it to the person by post addressed to the person by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) in Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

Clause 96

- (1) Notice of every general meeting shall be given in the manner authorised by Clause 95 to –
 - a. every Director;
 - b. every member entitled to vote at a general meeting or to receive such notice in accordance with the provisions of this Constitution;

- c. every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting;
 - d. the auditor (if any) for the time being of the Company; and
- (2) No other person is entitled to receive notices of general meetings.

WINDING UP

Clause 97

- (1) If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the Company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members subject to the rights or restrictions attached to such classes of shares.
- (2) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

INDEMNITY OF OFFICERS, AUDITORS OR AGENTS

Clause 98

Subject to the Corporations Act, every officer, auditor or agent of the Company shall be indemnified out of the property of the Company against any liability incurred by the person in the person's capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgement is given in the person's favour or in which the person is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Act granted to the person by the Court.

SHARE CAPITAL AND SHARE RIGHTS

Ordinary Class Shares

Clause 99

Subject to the rights, privileges and conditions attached to other classes of shares as hereinafter provided, the ordinary shares shall confer on the holders thereof the following rights and privileges:

Voting Rights –

- (1) to receive notice of and to attend in person or by proxy or by attorney at any general meeting of the Company and to cast one (1) vote upon a show of hands and upon a poll to cast one (1) vote for each share held;

Dividend Rights –

- (2) the right to payment of all dividends, distributions, bonuses and other profits that the Directors may from time to time recommend and as the Company may pursuant to this Constitution declare; and

Winding Up –

- (3) upon a reduction of capital or winding up of the Company to participate pari passu with the other holders of ordinary shares in the surplus assets of the Company.

"A" Class Shares

Clause 100

Subject to the rights, privileges and conditions attached to other classes of shares as hereinafter provided, the A Class shares shall confer on the holders thereof the following rights and privileges –

Voting Rights –

- (1) to receive notice of and to attend in person or by proxy or by attorney at any general meeting of the Company and to cast one (1) vote upon a show of hands and upon a poll to cast one (1) vote for each share held.

Dividend Rights –

- (2) No right to payment of any dividend or distribution of capitalised profits whatsoever.

Winding Up –

- (3) Subject to the rights of the "I" Class Redeemable Preference Shares, upon a reduction of capital or winding up of the Company the right, in priority to all other shares of the Company, to a return of paid up capital to a value not exceeding the amount defined in the terms of issue of each of such shares but shall not carry the right to any further participation in the surplus profits or assets of the Company.

"B", "C", "D", "E", "F", "G" & "H" Class Shares

Clause 101

Subject to the rights, privileges and conditions attached to other classes of shares as provided herein the said "B", "C", "D", "E", "F", "G" and "H" class shares shall confer on the holders thereof the following rights and privileges –

Voting Rights –

- (1) No right to vote at any general meeting of the Company nor shall the holder or holders thereof be entitled to receive notice of or to attend any general meeting of the Company.

Dividend Rights –

- (2) The right to payment of such dividends as the Directors may from time to time recommend and as the Company may pursuant to this Constitution declare.

Winding Up –

- (3) Upon a reduction of capital or winding up of the Company shall as regards return of capital rank after the said "A" class shares and "I" class redeemable preference shares but in priority to all other shares of the Company to a value not exceeding the value defined in the terms of issue of each of such shares but shall not carry the right to any further participation in the surplus profits or assets of the Company.

"I" Class Redeemable Preference Shares

Clause 102

The "I" Class Redeemable Preference Shares shall confer upon the holders thereof the following rights and privileges:-

Dividend Rights –

- (1) The right to a fixed, cumulative preferential dividend at the rate specified in the terms of issue as determined by the Directors and in priority to any payment of dividend to the holders of any other class of shares in the Company.

Meetings –

- (2) The right to receive notices of and to attend general meetings;

Voting Rights –

- (3) The right to vote (on a show of hands to one vote, and on a poll, to one vote for each "I" Class Redeemable Preference Share held) at general meetings in the event that:
 - a. the dividend payable on the "I" Class Redeemable Preference Shares is more than 30 days in arrears; or
 - b. the matter to be decided is a proposal for the winding up of the Company, the sale or disposal of the Company's main undertaking, the reduction or return of any part of the Company's issued capital or which affects the rights attached to the "I" Class Redeemable Preference Shares.

Winding Up –

- (4) The right upon a reduction of capital or winding up of the Company in priority to any payment to the holders of any other class of shares to be repaid the amount paid up on the issue of the "I" Class Redeemable Preference Shares but shall not participate in any further or other distribution of profits or assets of the Company.

Clause 103

The Redeemable Preference Shares shall be redeemed only on the terms of issue of Redeemable Preference Shares as determined by the Directors, by the payment to the holders thereof of the sums paid up on such Redeemable Preference Shares, and all arrears of dividend and the amount of dividend accrued up to the date of redemption (whether earned or declared or not) calculated on a daily basis.

CLASS MEETINGS

Clause 104

None of the foregoing shall affect the rights of the holders of any of the above classes of shares to have a class meeting pursuant to the provisions of the Corporations Act 2001.

LOANS TO MEMBERS AND ASSOCIATES

Clause 105

In this Clause and the Schedule to this Constitution unless the context otherwise requires –

“Acknowledgement” means the acknowledgement by an Associate of the Loan substantially in the form set out in Part B of the Schedule.

“Associate” has the meaning given by Section 318 of the Income Tax Assessment Act 1936.

“Division 7A” means Division 7A of the Income Tax Assessment Act 1936.

“Loan Agreement” means the agreement set out in Part A of the Schedule.

“Loan” means an advance or facility defined in subsection 109D(3) of the Income Tax Assessment Act 1936 and made by the Company to a member or the member’s Associate (as the case may be) on the terms and conditions set out in the Loan Agreement.

“Schedule” means the Schedule to this Constitution.

Clause 106

Where the Company makes a Loan to a member or an Associate and the terms of that Loan do not comply in every respect with the requirements of Division 7A:

- a. such Loan shall be upon the terms and conditions described in the Loan Agreement set out in Part A of the Schedule to this Constitution;
- b. any member shall be bound by the Loan Agreement pursuant to section 140 of the Corporations Act 2001 (Cwth) where the Loan is made to the member; and
- c. any Associate shall be bound by the Loan Agreement upon signing the Acknowledgement where the Loan is made to the Associate.

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SCHEDULE – LOAN AGREEMENT – PART A

DEFINITIONS AND INTERPRETATIONS

Clause 1

(1) For the purposes of this Schedule:

“Act” means the Income Tax Assessment Act 1936.

“Benchmark Interest Rate” means the interest rate determined by subsection 109N (2) of the Income Tax Assessment Act 1936.

“Borrower” means a member or member’s Associate who receives an Original Advance or Further Advance under this Loan Agreement.

“Commencement Date” means the date on which the Company makes a Loan to a member or a member’s Associate and in the case of an Associate, the date upon which the Associate signs the Acknowledgement.

“Constitution” means the Constitution of the Company.

“Events of Default” means the events of default described in Clause 7 of this Loan Agreement

“Further Advance” means any additional Loan by the Company to the member or the member’s Associate from time to time.

“Interest” means the interest payable on the Loan at the Benchmark Interest Rate.

“Minimum Yearly Repayment” means the minimum annual repayment in reduction of the Principal Sum required under subsection 109E of Division 7A of the Act.

“Original Advance” means the first Loan made by the Company to the Borrower.

“Principal Sum” means: (a) the Original Advance; and (b) any Further Advance.

“Secured Borrowing” means any Loan which is secured by a registered mortgage over real property and the market value of the mortgaged property (after deducting any mortgages on the property which have priority) is at least 110% of the amount borrowed at the time the Loan was made.

“Unsecured Borrowing” means any Loan which is not a Secured Borrowing.

(2) The definitions and interpretations contained in Clause 105 of this Constitution shall apply to this Loan Agreement.

(3) When two or more persons comprise a party to this Loan Agreement, the covenants and conditions on their part contained in this Loan Agreement shall bind them jointly and each of them severally

(4) A reference to any gender includes all other genders and a reference to the singular includes the plural and vice versa.

(5) Reference to a statute shall include all amendments from the time being in force and any other statute enacted in substitution for and the regulations, by-laws or other orders for the time being made under the statute.

(6) Headings shall not affect the interpretation of this Loan Agreement.

APPLICATION

Clause 2

Any Loan by the Company to a member or an Associate shall be on the terms and conditions set out in this Loan Agreement.

TERMS OF BORROWING

Clause 3

- (1) The Company has agreed to lend to the Borrower and the Borrower has agreed to borrow from the Company the Principal Sum on the Commencement Date.
- (2) The Borrower covenants with the Company to repay the Principal Sum together with Interest thereon at the times specified in this Loan Agreement.
- (3) Interest shall be paid on the Principal Sum or on so much thereof as shall be outstanding from time to time and shall be computed daily and paid:
 - a. annually in arrears on 30 June in each year; or
 - b. at the written request of the Company, monthly in arrears on the last day of each calendar month; or
 - c. within 30 days of receipt of written notice by the Company.
- (4) Any Interest accrued on any Principal Sum between the last day for payment of Interest and the date of repayment of the Principal Sum shall be paid in full on the date of repayment of the Principal Sum.
- (5) The Company may in its discretion lend to the Borrower a Further Advance.

SECURED AND UNSECURED BORROWINGS

Clause 4

- (1) Each Unsecured Borrowing shall be repaid in full by the Borrower within 7 years of the Commencement Date.
- (2) Each Secured Borrowing shall be repaid in full by the Borrower within 25 years of the Commencement Date.

EARLIER REPAYMENT OF PRINCIPAL SUM

Clause 5

- (1) Notwithstanding clause 4, the Borrower:
 - a. shall repay to the Company the Minimum Yearly Repayment as required under Division 7A of the Act;
 - b. may at any time and from time to time prior to the expiration of the Unsecured Borrowing or Secured Borrowing (as the case may be) be called upon to repay the Principal Sum as follows:

- i. in the case of an Unsecured Borrowing , the Company may at any time and from time to time give the Borrower not less than 30 days written notice for the repayment of the whole or any part of the Principal Sum and the Borrower shall promptly make such payment to the Company without deduction; and
 - ii. in the case of a Secured Borrowing, the early repayment of the Principal Sum shall be governed by the relevant security document for the Secured Borrowing provided always that the Borrower shall not be entitled in any event to pay less than the Minimum Yearly Repayment.
- (2) All monies paid by the Borrower to the Company under this Loan Agreement shall be applied firstly in payment of any outstanding Interest, secondly in payment of other monies owing under this Loan Agreement and thirdly in reduction of the Principal Sum.
- (3) The Company may at any time demand immediate payment of the Principal Sum together with Interest on the occurrence of any Event of Default and the Borrower shall reimburse the Company upon demand for any costs and expenses incurred by the Company in connection with the occurrence of any Event of Default and recovery by the Company of all monies owing by the borrower to the Company under this Loan Agreement.

REPRESENTATIONS AND WARRANTIES

Clause 6

- (1) The Borrower hereby represents and warrants to the Company that:
 - a. no action suit or proceeding is pending against the Borrower;
 - b. this Loan Agreement is a legal and binding obligation enforceable against the Borrower in accordance with its terms.
- (2) The Company hereby represents and warrants to the Borrower that:
 - a. the Company is not in the business of providing credit within the meaning of the Consumer Credit (Western Australia) Code as amended;
 - b. this Loan Agreement is not a loan contract within the meaning of the Consumer Credit (Western Australia) Code as amended;
 - c. this Agreement is not a credit contract or a mortgage within the meaning of the Consumer Credit (Western Australia) Act 1996 and the Consumer Credit (Western Australia) Code.

EVENTS OF DEFAULT

Clause 7

- (1) The following events each constitute an Event of Default:
 - a. if the Borrower defaults in the repayment of the whole or any part of the Principal Sum or the Interest by the due date for each payment;
 - b. if the Borrower otherwise defaults in the observance or performance of any of the covenants agreements or conditions contained or implied in this Loan Agreement;

- c. if the Borrower becomes insolvent or is placed under official management or makes a composition or arrangement with any of its creditors or in the case of a natural person the Borrower commits an act of Bankruptcy or is placed under administration;
- d. if an order is made or a resolution is passed to wind up the Borrower or the Borrower appoints a voluntary administrator;
- e. if any receiver, agent for a mortgagee in possession or other external administrator takes possession of any assets of the Borrower.

NOTICES

Clause 8

Any notice required to be served by or on any party (including an Associate) shall be in writing and the provisions of Clauses 95 and 96 of this Constitution shall apply.

COSTS AND STAMP DUTY

Clause 9

The Borrower shall pay all legal costs (if any), stamp duty and other expenses incurred by the Company in connection with the preparation, execution, stamping and upstamping of this Loan Agreement.

SEVERABILITY

Clause 10

If any part of this Loan Agreement is or becomes void or unenforceable or offends or shall offend the provisions of the consumer Credit (Western Australia) Code, the Corporations Act or the Act then that part shall be severed from this Loan Agreement to the intent that all remaining parts shall not be or become void or unenforceable and shall remain in full force and effect and be unaffected by any severance.

ENTIRE AGREEMENT

Clause 11

Notwithstanding anything said or written prior to the signing of this by the parties or their authorised representatives, this Loan Agreement constitutes the entire agreement between the parties and supersedes any prior agreement.

GOVERNING LAW

Clause 12

This Loan Agreement shall be governed by and construed in accordance with the laws of the state in which the Company has its registered office.

FURTHER ASSURANCES

Clause 13

Each party shall do, sign and execute all deeds, schedules, acts, documents and things as may reasonably be required by the other Party to carry out and give effect to the terms and intentions of this Loan Agreement.

VARIATION

Clause 14

- (1) Subject to clause 14 (2) of this Loan Agreement, any variation to the terms and conditions of this Loan Agreement shall be in writing and initiated by a Director on behalf of the Company and the Borrower.
- (2) Any amendments to the Act changing or amending the requirements of section 109N of Division 7A of the Act shall be deemed to be included in this Loan Agreement.

TRUSTEE COVENANTS

Clause 15

- (1) This clause 15 applies if the Borrower enters into this Loan Agreement as trustee of any trust (Trust).
- (2) The Borrower hereby represents and warrants that:
 - a. it is the sole trustee of the Trust;
 - b. it enters into this Loan Agreement for the purposes and benefit of the Trust and has obtained the consent or approval of any person which is needed to ensure that the property of the Trust is bound upon the execution of this Loan Agreement;
 - c. it has power under the Trust deed to enter into this Loan Agreement, to undertake the obligations and liabilities in the manner and the extent contemplated by this Loan Agreement and to apply the assets of the Trust in satisfaction of any money payable under this Loan Agreement;
 - d. it has an unrestricted right to be fully indemnified out of the assets of the Trust;
 - e. it is not in default of its obligations as trustee and no steps have been taken or threatened by any person to:
 - i. revoke or vary the Trust deed;
 - ii. remove the Borrower as trustee of the Trust;
 - iii. appoint additional trustees to the Trust;
 - iv. have the Trust assets administered pursuant to any order of a court;
 - v. have any receiver or administrator of the Trust assets appointed or have the Trust wound up; or
 - vi. charge the Borrower or anyone acting on its behalf with any breach of trust or misappropriation of Trust assets in connection with the Trust;
 - f. the vesting date for the Trust occurs after the Borrower's obligations under this Loan Agreement are expected to end by the passage of time; and
 - g. all information or documents supplied to the Company or to any person on the Company's behalf for the purposes of the Loan Agreement are true and accurate and leave no material facts undisclosed.

- (3) The Borrower acknowledges and agrees that this Loan Agreement is entered into and the Loan is given on the basis that each of the warranties contained in clause 15 are true and correct and will remain so throughout the term of the Loan.
- (4) This clause 15 (4) applies if the Trust is a unit trust; the Borrower hereby represents and warrants that the unitholders of the Trust are as specified in writing to the Company and that all of the issued units in the Trust are beneficially held by these unitholders.
- (5) The Borrower must not allow any of the following to occur without first obtaining the Company's written consent:
- a. any alteration to the Trust deed;
 - b. any disposal of units in the Trust;
 - c. the vesting or distribution of the assets of the Trust other than income;
 - d. the appointment of any person as a new or substitute trustee under the Trust deed;
 - e. the delegation of any power or duty conferred upon the Borrower under the Trust deed other than as expressly authorized by this Loan Agreement; or
 - f. anything which will or may harm the Borrower;
- (6) If any new or substitute trustee of the Trust is appointed under the Trust deed, the Borrower:
- a. acknowledges that this Loan Agreement will bind the new trustee; and
 - b. shall procure that the new trustee enters into a deed prepared by the Company's solicitors at the Borrower's cost by which the new trustee agrees to be bound by the terms of this Loan Agreement.
- (7) The Borrower:
- a. agrees that the assets of the Trust and also those beneficially held by the Borrower on its own behalf will be available to satisfy the Borrower's obligations under this Loan Agreement; and
 - b. must, if the Company requires, exercise its rights of indemnity against the assets of the Trust to satisfy any of its obligations under this Loan Agreement.

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SCHEDULE – LOAN AGREEMENT – PART B

ACKNOWLEDGEMENT BY ASSOCIATE

I, _____ of _____, acknowledge that:

- (1) Any Loan to me/us* by (Company Name) (the “**Company**”) shall be on the terms described in the Loan Agreement contained in the Schedule to the Constitution of the Company.
- (2) I/We** will be bound by the terms and conditions of the Loan Agreement with respect to any Loan.

_____ Date:

Name of Associate

_____ Date:

Name of Associate

(on behalf of **)

* delete as appropriate

** add particulars of trust, company or entity (if any) when the Associate is signing on its behalf.

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